

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION**

AMERICAN CLOTHING EXPRESS, INC.  
D/B/A ALLURE BRIDALS AND JUSTIN  
ALEXANDER, INC.

Plaintiffs,

CLOUDFLARE, INC. and DOES 1-200,  
Inclusive

Defendants.

Case No. 2:20-cv-02007-SHM-ATC

[Jury Trial Demanded]

**CLOUDFLARE, INC.'S ANSWER TO PLAINTIFFS' AMENDED COMPLAINT FOR  
DIRECT AND CONTRIBUTORY COPYRIGHT INFRINGEMENT**

Cloudflare hereby restates its answer and responds to all numbered paragraphs of the Amended Complaint. Cloudflare does not respond to the table of contents, headings, and subheadings of the Amended Complaint as they are an outline of the Amended Complaint that requires no response. Cloudflare does not need to respond to paragraphs 287-296 of the Amended Complaint because they are not directed to it, but it responds to them in an abundance of caution.

### **ANSWER TO AMENDED COMPLAINT**

1. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies the allegations of paragraph 1.

2. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies the allegations of paragraph 2.

3. Cloudflare admits the allegations of paragraph 3.

4. This paragraph sets forth a legal conclusion to which no response is required. To the extent a response is deemed required, Cloudflare admits that its security services provide for website traffic to be directed to Cloudflare IP addresses, which results in the IP address of the website's hosting provider not being publicly visible, in order to protect the website against security threats, including denial-of-service attacks. Cloudflare admits that the DMCA provides a series of safe harbors for providers of different types of online services, including web hosts, and that the elements of a valid notification of claimed infringement directed at web hosts are enumerated at 17 U.S.C. §512(c)(3)(A). Although Cloudflare may forward information to the respective web host if the complainant elects, the complainant may not always elect to have the notification forwarded, and Cloudflare also provides the complainant with the identity of the current hosting provider so that the complainant can send a notification of claimed infringement

directly to the host. Cloudflare denies the remainder of paragraph 4.

5. Cloudflare denies the first sentence of paragraph 5. Cloudflare lacks knowledge to admit or deny whether the defendants whom Plaintiffs accuse of being “Infringing website Defendants” operate infringing websites and therefore denies the allegation implicit in the use of that phrase. Cloudflare lacks knowledge to admit or deny the remaining allegations of paragraph 5 and therefore denies them.

6. Cloudflare lacks knowledge to admit or deny whether the websites that Plaintiffs refer to as “Infringing Websites” are indeed infringing and therefore denies the allegation implicit in the use of that phrase. Cloudflare lacks knowledge to admit or deny the other allegations and therefore denies the remainder of paragraph 6.

7. Cloudflare denies the allegations of paragraph 7.

8. Cloudflare lacks knowledge to admit or deny the allegations of paragraph 8 and therefore denies them.

9. Cloudflare denies the allegations of paragraph 9.

10. Cloudflare lacks knowledge to admit or deny the allegations of paragraph 10 and therefore denies them.

11. Cloudflare denies that it hosted any images at issue on its CDN. Cloudflare lacks knowledge to admit or deny the remaining allegations of paragraph 11 and therefore denies them.

12. Cloudflare denies the allegations of paragraph 12.

13. Cloudflare denies the allegations of paragraph 13.

14. Cloudflare denies the allegations of paragraph 14.

15. Cloudflare denies the allegations of paragraph 15. [REDACTED]

[REDACTED]

16. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Cloudflare lacks knowledge to admit or deny the remaining allegations of paragraph 16 and therefore denies them.

17. Cloudflare denies the allegations of paragraph 17.

18. Cloudflare admits that, on some occasions, its system stores static or dynamic content from its customers' websites by an automated process called "caching," to which 17 U.S.C. § 512(b) specifically refers. Cloudflare admits that, on some occasions, Cloudflare's network may serve cached material to a requester from a data center closest to the requester. Cloudflare denies the remaining allegations of paragraph 18.

19. Cloudflare lacks knowledge to admit or deny the allegations of paragraph 19 concerning a study of ISPs and therefore denies them. Cloudflare denies the remaining allegations of paragraph 19.

20. Cloudflare admits that Plaintiffs are asserting claims against Cloudflare for alleged contributory copyright infringement. Cloudflare denies the remainder of paragraph 20.

21. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies

the allegations of paragraph 21.

22. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies the allegations of paragraph 22.

23. Cloudflare admits the allegations of paragraph 23.

24. Cloudflare admits that Plaintiffs have attached three exhibits labeled Exhibit 3, Exhibit 4, and Exhibit 5 to the Complaint. Cloudflare denies that Exhibit 3 contains communications that Plaintiffs sent to Cloudflare. Cloudflare denies that it has ever received a notification of claimed infringement from Plaintiffs that met the elements of 17 U.S.C. § 512(b). Cloudflare lacks knowledge to admit or deny the other allegations and therefore denies the remainder of paragraph 24.

25. Cloudflare admits that this is a civil action seeking damages and injunctive relief under the copyright laws of the United States, 17 U.S.C. § 101 et seq. Cloudflare denies the remainder of paragraph 25.

26. Cloudflare admits the allegations of paragraph 26.

27. Cloudflare denies the allegations of paragraph 27.

28. Cloudflare lacks knowledge to admit or deny whether the defendants whom Plaintiffs accuse of being “Infringing Website Defendants” operate infringing websites and therefore denies the allegation implicit in the use of that phrase. Cloudflare lacks knowledge to admit or deny the other allegations and therefore denies the remainder of paragraph 28.

29. Cloudflare denies the allegations of paragraph 29.

30. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies the allegations of paragraph 30.

31. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies

the allegations of paragraph 31.

32. Cloudflare believes, and therefore admits, that Allure operates two websites, Madison-James.com and Allurebridals.com, where it promotes its products to consumers. Cloudflare lacks knowledge to admit or deny the other allegations and therefore denies the remainder of paragraph 32.

33. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies the allegations of paragraph 33.

34. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies the allegations of paragraph 34.

35. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies the allegations of paragraph 35.

36. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies the allegations of paragraph 36.

37. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies the allegations of paragraph 37.

38. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies the allegations of paragraph 38.

39. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies the allegations of paragraph 39.

40. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies the allegations of paragraph 40.

41. Cloudflare believes, and therefore admits, that Justin Alexander operates a website where it promotes its products to consumers at justinaalexander.com and that it uses that

website to display its entire catalog of product and to refer brides to stores in their local markets. Cloudflare lacks knowledge to admit or deny the other allegations and therefore denies the remainder of paragraph 41.

42. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies the allegations of paragraph 42.

43. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies the allegations of paragraph 43.

44. Cloudflare believes, and therefore admits, that Plaintiffs create photoshoots with multiple views of each of their dresses to be displayed to consumers on Plaintiffs' websites. Cloudflare lacks knowledge to admit or deny the other allegations and therefore denies the remainder of paragraph 44.

45. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies the allegations of paragraph 45.

46. Cloudflare believes, and therefore admits, that Plaintiffs display images on their websites. Cloudflare lacks knowledge to admit or deny the other allegations and therefore denies the remainder of paragraph 46.

47. Cloudflare believes, and therefore admits, that the Plaintiffs' websites display their entire catalogues of their products, as shown in the Plaintiffs' images, and to refer brides to stores in their local markets. Cloudflare lacks knowledge to admit or deny the other allegations and therefore denies the remainder of paragraph 47.

48. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies the allegations of paragraph 48.

49. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies

the allegations of paragraph 49.

50. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies the allegations of paragraph 50.

51. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies the allegations of paragraph 51.

52. Cloudflare denies the allegations of paragraph 52.

53. Cloudflare admits the allegations of paragraph 53.

54. Cloudflare admits the allegations of paragraph 54.

55. Cloudflare admits the quotation in the body of the paragraph except that it denies that a CDN always serves a client (Internet user requesting content) with content from the closest data center. Cloudflare admits that “static content” refers to content that normally does not change over time. Cloudflare denies the definition of “dynamic content” in footnote 2. Cloudflare denies the remainder of paragraph 55.

56. Cloudflare admits that the first two sentences accurately describe caching services at a high level of generalization. Cloudflare otherwise denies the allegations of paragraph 56.

57. Cloudflare admits the authenticity of the quotation but denies the remaining allegations of paragraph 57.

58. Cloudflare admits that it has data centers in 310 cities (including Memphis) located in over 120 countries, and that its network can reach about 95% of the world’s Internet-connected population within approximately 50 ms. Cloudflare admits that the image in paragraph 58 is depicted on its website at <https://www.cloudflare.com/network>. Cloudflare denies the remaining allegations of paragraph 58.

59. Cloudflare admits the allegations of paragraph 59.



60. Cloudflare admits the allegations of paragraph 60.

61. Cloudflare denies that it requires clients to designate two Cloudflare nameservers as the authoritative nameservers for their website domain, but instead Cloudflare merely permits clients to designate Cloudflare nameservers in order to use certain Cloudflare services.

Cloudflare admits the remaining allegations of paragraph 61.

62. Cloudflare lacks knowledge to admit or deny whether the websites that Plaintiffs refer to as “Infringing Websites” are indeed infringing and therefore denies the allegation implicit in the use of that phrase. Cloudflare lacks knowledge to admit or deny the other allegations and therefore denies the remainder of paragraph 62.

63. Cloudflare lacks knowledge to admit or deny whether the websites that Plaintiffs refer to as “Infringing Websites” are indeed infringing and therefore denies the allegation implicit in the use of that phrase. Cloudflare admits that, when Cloudflare provides authoritative nameserver service for a customer’s website, Cloudflare’s system generally uses a network technology called “Anycast” to cause Internet Service Providers (ISPs) to route initial domain name system (or DNS) lookups for that website domain to a Cloudflare data center, as opposed to the host server for the customer’s website. Cloudflare lacks knowledge to admit or deny the other allegations and therefore denies the remainder of paragraph 63.

64. Cloudflare lacks knowledge to admit or deny whether the websites that Plaintiffs refer to as “Infringing Websites” are indeed infringing and therefore denies the allegation implicit in the use of that phrase. Cloudflare admits that, once a customer designates a Cloudflare nameserver as the authoritative nameserver for its website, later requests from Internet users for that website will generally pass through Cloudflare’s automated network of data centers, and Cloudflare admits that this function is known as “reverse proxying.”

Cloudflare further admits that, for websites of customers that use Cloudflare's services, the initial DNS lookup for a domain that an Internet user seeks to reach will generally automatically return the IP address of a Cloudflare data center. Cloudflare denies the remainder of paragraph 64.

65. Cloudflare lacks knowledge to admit or deny whether the websites that Plaintiffs refer to as "Infringing Websites" are indeed infringing and therefore denies the allegation implicit in the use of that phrase. Cloudflare denies the remainder of paragraph 65.

66. Cloudflare admits that it has offered functionality called "Always Online" since 2010, but the technical implementation and capabilities of Always Online have changed over time. Cloudflare denies the remaining allegations of paragraph 66.

67. Cloudflare denies the allegations of paragraph 67.

68. This paragraph sets forth a legal conclusion to which no response is required. To the extent a response is deemed required, Cloudflare admits that there are differences in the safe harbor elements under 17 U.S.C. §512(b) versus (c). Cloudflare denies that it acted as a host for any material at issue in this litigation. Cloudflare lacks knowledge to admit or deny the remaining allegations of paragraph 68 and therefore denies.

69. Cloudflare admits that it states at the webpage identified at paragraph 69 that "Cloudflare's Always Online™ is a feature that caches a static version of your website, through its integration with the Internet Archive, keeping your website available in case your origin server becomes unresponsive." Cloudflare denies the inference that Cloudflare alone performs Always Online's caching functions, and therefore denies the remainder of paragraph 69.

70. Cloudflare admits the allegations of paragraph 70.

71. Cloudflare admits the allegations of paragraph 71.

72. Cloudflare admits that, in the current configuration of Always Online, if Always Online is enabled, when an origin is unreachable, Always Online checks Cloudflare's cache for a stale or expired version of the website. If there is not a version in the local cache, Cloudflare will then go to the Internet Archive and fetch the most recently archived version of the site to serve to the site's visitors. When that happens, Always Online serves the archived content with a banner to let the visitors know that the origin is having problems. Cloudflare otherwise denies the allegations of paragraph 72.

73. Cloudflare admits the allegations of paragraph 73.

74. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies the allegations of paragraph 74.

75. Cloudflare denies the allegations of paragraph 75.

76. Cloudflare admits that when Internet Archive integration is enabled, crawling frequencies vary based on the Cloudflare plan of the customer. Cloudflare denies the remaining allegations of paragraph 76.

77. Cloudflare admits the allegations of paragraph 77.

78. Cloudflare denies the allegations of paragraph 78.

79. Cloudflare denies the allegations of paragraph 79.

80. Cloudflare denies the allegations of paragraph 80.

81. Cloudflare denies the allegations of paragraph 81.

82. Cloudflare admits its webpage at <https://www.cloudflare.com/learning/performance/speed-up-a-website/> states: "Images often take the longest to load on a website since image files tend to be larger in size than HTML and CSS files." Cloudflare otherwise denies the allegations of paragraph 82.

83. Cloudflare admits it made the quoted statement at the webpage cited in paragraph 83, linking to and relying on information from a third-party website. Cloudflare denies the remainder of paragraph 83.

84. Cloudflare admits the allegations of paragraph 84.

85. Cloudflare denies that the quoted statement in paragraph 85 appears at <https://developers.cloudflare.com/images/cloudflare-images/>. The quoted statement in paragraph 85 instead appears at <https://developers.cloudflare.com/images/polish/>. Cloudflare otherwise admits the allegations of paragraph 85.

86. Cloudflare denies that the quoted statement in paragraph 85 appears at <https://developers.cloudflare.com/images/cloudflare-images/>. The quoted statement in paragraph 86 instead appears at <https://ts.cloudflare.community/images/cloudflare-images/>. Cloudflare otherwise admits the allegations of paragraph 86.

87. Cloudflare admits that it previously stated at <https://developers.cloudflare.com/images/image-resizing/> that:

“With Image Resizing, you can transform images on Cloudflare’s edge platform. You can resize, adjust quality, and convert images to WebP or AVIF format on demand. Cloudflare will automatically cache every derived image at the edge, so you only need to store one original image at your origin.

Cloudflare Image Resizing lets you:

- Quickly and easily adapt images to your site’s layout and your visitors’ screen sizes without maintaining a server-side image processing pipeline on your servers.
- Integrate image processing with Workers, which enables advanced integrations such as custom URL schemes, content negotiation, and responsive images based on Client Hints.

You can use Cloudflare Image Resizing with either a pre-defined URL format or,

for advanced use cases, with Cloudflare Workers.”

Cloudflare otherwise denies the allegations of paragraph 87.

88. Cloudflare admits the allegations of paragraph 88.

89. Cloudflare admits that the quoted statement of paragraph 89 appears at the URL identified.

90. This paragraph sets forth a legal conclusion to which no response is required. To the extent a response is deemed required, Cloudflare admits that Cloudflare Workers is a platform for building serverless applications on Cloudflare's global edge network. Cloudflare denies the remaining allegations of paragraph 90.

91. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies the allegations of paragraph 91.

92. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies the allegations of paragraph 92.

93. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies the allegations of paragraph 93.

94. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies the allegations of paragraph 94.

95. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies the allegations of paragraph 95.

96. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies the allegations of paragraph 96.

97. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies the allegations of paragraph 97.

98. Cloudflare denies that it has sheltered operators of networks of infringing websites. Cloudflare lacks knowledge to admit or deny the remaining allegations of paragraph 98 and therefore denies them.

99. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies the allegations of paragraph 99.

100. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies the allegations of paragraph 100.

101. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies the allegations of paragraph 101.

102. Cloudflare admits the allegations of paragraph 102.

103. Cloudflare admits the allegations of paragraph 103.

104. Cloudflare admits the allegations of paragraph 104.

105. Cloudflare admits the allegations of paragraph 105.

106. Cloudflare denies the allegations of paragraph 106. [REDACTED]

[REDACTED]

[REDACTED]

107. Cloudflare admits the allegations of paragraph 107.

108. Cloudflare denies the allegations of paragraph 108, which [REDACTED]

[REDACTED]

109. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies the allegations of paragraph 109. Plaintiffs' original complaint identified 98 allegedly infringing websites, but Plaintiffs stipulated to dismiss one of those websites after two-and-a-half years of litigation, ostensibly because the website (www.bride2bride.co.uk) was non-infringing.



110. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies the allegations of paragraph 110.

111. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies the allegations of paragraph 111.

112. Cloudflare denies the allegations of paragraph 112. [REDACTED]

[REDACTED]

[REDACTED]

113. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies the allegations of paragraph 113.

114. Cloudflare denies the allegations of paragraph 114. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

115. Cloudflare denies the allegations of paragraph 115.

116. This paragraph sets forth a legal conclusion to which no response is required. To the extent a response is deemed required, Cloudflare admits the allegations of paragraph 116.

117. This paragraph sets forth a legal conclusion to which no response is required. To the extent a response is deemed required, Cloudflare denies the allegations of paragraph 117. 17 U.S.C. §512(i) states that a service provider qualifies for the limitations on liability in that section only if it (a) has adopted and reasonably implemented, and informs subscribers and account holders of the service provider's system or network of, a policy that provides for the termination in appropriate circumstances of subscribers and account holders of the service

provider's system or network who are repeat infringers; and (b) accommodates and does not interfere with standard technical measures.

118. Cloudflare denies the allegations of paragraph 118.

119. Cloudflare denies the allegations of paragraph 119.

120. Cloudflare denies the allegations of paragraph 120.

121. Cloudflare denies the allegations of paragraph 121.

122. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies the allegations of paragraph 122.

123. Cloudflare admits the allegations of paragraph 123.

124. Cloudflare denies the allegations of paragraph 124.

125. This paragraph sets forth a legal conclusion to which no response is required. To the extent a response is deemed required, Cloudflare denies the allegations of paragraph 125.

126. Cloudflare denies the allegations of paragraph 126.

127. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Cloudflare denies the remainder of paragraph 127.

128. Cloudflare denies the allegations of paragraph 128.

129. [REDACTED]

[REDACTED]

Cloudflare denies the remaining allegations of paragraph 129.

130. Cloudflare denies the allegations of paragraph 130.

131. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies



the allegations of paragraph 131.

132. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies the allegations of paragraph 132.

133. Cloudflare denies the allegations of paragraph 133.

134. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies the allegations of paragraph 134.

135. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies the allegations of paragraph 135.

136. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Moreover, after submitting a notification of claimed infringement, the complainant is provided with the identity of the hosting provider that Cloudflare believes to correspond to the website at issue, so the complainant can send a notification of claimed infringement to the host directly and follow up if the material at issue is not taken down. Cloudflare denies the remaining allegations of paragraph 136.

137. [REDACTED]

[REDACTED]

[REDACTED] Cloudflare lacks knowledge to admit or deny the remaining allegations of paragraph 137 and therefore denies them.

138. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies

the allegations of paragraph 138.

139. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies the allegations of paragraph 139.

140. [REDACTED]

[REDACTED] Cloudflare denies the remaining allegations of paragraph 140.

141. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies the allegations of paragraph 141.

142. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies the allegations of paragraph 142.

143. Cloudflare admits that on January 26, 2022 Plaintiffs obtained a default judgment for 94 defendants as to liability only, which included angelmall.com.au, dreamqueen.es, dreamqueen.se, dressywell.co.za, herdress.co.uk, livedressy.com, missydress.com.br, missydress.es, missygowns.com, promdaily.com, and promsdiary.com. Cloudflare lacks knowledge to admit or deny the remaining allegations of paragraph 143 and therefore denies them.

144. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Cloudflare denies the remaining allegations of paragraph 144.

145. Cloudflare denies the allegations of paragraph 145.

146. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies the allegations of paragraph 146.

147. [REDACTED]

[REDACTED] Cloudflare denies the remainder of paragraph 147.

148. Cloudflare denies the allegations of paragraph 148. [REDACTED]

149. [REDACTED]

[REDACTED] Cloudflare denies the remainder of paragraph 149.

150. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies the allegations of paragraph 150.

151. [REDACTED]

[REDACTED] Cloudflare lacks knowledge to admit or deny the remaining allegations of paragraph 151 and therefore denies them.

152. [REDACTED]

[REDACTED] Cloudflare lacks knowledge to admit or deny the remaining allegations of paragraph 152 and therefore denies them.

153. This paragraph sets forth a legal conclusion to which no response is required. To the extent a response is deemed required, Cloudflare denies that the Digital Millennium Copyright Act places any requirements on online service providers: it is an *optional* limitation on remedies (if a service provider is an infringer subject to remedies to begin with) that a service provider may obtain by fulfilling various statutory conditions. Cloudflare admits that the DMCA provides a series of safe harbors for providers of different types of online services, and that section 512(c)(2) includes criteria for a “designated agent,” including name, address, phone number, and electronic mail address, but does not specify that the designated agent must respond

to all notifications of claimed infringement directed at such communication channels or that he or she cannot direct persons seeking to submit notifications of claimed infringement to submit them to an alternative communication channel. Cloudflare denies the remainder of paragraph 153.

154. This paragraph sets forth a legal conclusion to which no response is required. To the extent a response is deemed required, Cloudflare denies that the Digital Millennium Copyright Act places any requirements on online service providers: it is an *optional* limitation on remedies (if a service provider is an infringer subject to remedies to begin with) that a service provider may obtain by fulfilling various statutory conditions. Cloudflare admits that the DMCA provides a series of safe harbors for providers of different types of online services, and that sub-sections 512(b) and (d) include criteria within sub-section 512(c) as well as additional criteria unique to those sub-sections. Cloudflare denies the remainder of paragraph 154.

155. This paragraph sets forth a legal conclusion to which no response is required. To the extent a response is deemed required, Cloudflare denies that the Digital Millennium Copyright Act places any requirements on online service providers: it is an *optional* limitation on remedies (if a service provider is an infringer subject to remedies to begin with) that a service provider may obtain by fulfilling various statutory conditions. Cloudflare admits that 17 U.S.C. §512(c)(2)(A) includes a provision for service providers to “make[] available through its service, including on its website in a location available to the public, and by providing to the Copyright Office, substantially the following information: (A) the name, address, phone number, and electronic mail address of the agent. (B) other contact information which the Register of Copyrights might deem appropriate. Cloudflare denies the remainder of paragraph 155.

156. This paragraph sets forth a legal conclusion to which no response is required. To

the extent a response is deemed required, Cloudflare admits that 17 U.S.C. §512(i)(1) states:

“Accommodation of technology.—The limitations on liability established by this section shall apply to a service provider only if the service provider—

(A) has adopted and reasonably implemented, and informs subscribers and account holders of the service provider’s system or network of, a policy that provides for the termination in appropriate circumstances of subscribers and account holders of the service provider’s system or network who are repeat infringers; and

(B) accommodates and does not interfere with standard technical measures.”

Cloudflare denies the remainder of paragraph 156.

157. This paragraph sets forth a legal conclusion to which no response is required. To the extent a response is deemed required, Cloudflare admits that 17 U.S.C. §512(i)(1) states:

“Accommodation of technology.—The limitations on liability established by this section shall apply to a service provider only if the service provider—

(A) has adopted and reasonably implemented, and informs subscribers and account holders of the service provider’s system or network of, a policy that provides for the termination in appropriate circumstances of subscribers and account holders of the service provider’s system or network who are repeat infringers; and

(B) accommodates and does not interfere with standard technical measures.”

Cloudflare denies the remainder of paragraph 157.

158. This paragraph sets forth a legal conclusion to which no response is required. To the extent a response is deemed required, Cloudflare admits that the quoted material appears at the publication identified in paragraph 158. Cloudflare denies the remainder of paragraph 158.

159. Cloudflare admits the allegations of paragraph 159.

160. Cloudflare admits that at all relevant times from December 8, 2016 until the present Cloudflare has identified either Justin Paine or Ryan Carter with regard to 17 U.S.C. §512(i)(1)(A). Cloudflare denies the remainder of paragraph 160.

161. Cloudflare admits that at all relevant times from December 8, 2016 until the present Cloudflare has identified abuse@cloudflare.com as the email address corresponding to Justin Paine or Ryan Carter for the purposes of 17 U.S.C. §512(i)(1)(A). Cloudflare denies the remainder of paragraph 161.

162. Cloudflare denies the allegations of paragraph 162. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

163. Cloudflare denies the allegations of paragraph 163. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

164. Cloudflare denies the premise of paragraph 164 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Cloudflare denies the remainder of paragraph 164.

165. Cloudflare denies the premise of paragraph 165 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Cloudflare denies the remainder of paragraph 165.

166. Cloudflare admits that when the owner or operator of a website designates Cloudflare as the authoritative “nameserver” for such website, Cloudflare’s name and IP appears for that website in an IP Address WHOIS lookup instead of the name and IP address for the host of that website. Cloudflare lacks knowledge to admit or deny whether the defendants whom Plaintiffs accuse of being “Infringing Websites” operate infringing websites and therefore denies the allegation implicit in the use of that phrase. Cloudflare lacks knowledge to admit or deny the other allegations and therefore denies the remainder of paragraph 166.

167. Cloudflare denies the allegations of paragraph 167. One method of identifying the host of an allegedly infringing website that uses Cloudflare's DNS services is to submit a notification of claimed infringement to Cloudflare and request that Cloudflare identify the website host in its response, but other methods also exist, including a subpoena under 17 U.S.C. §512(h), which Plaintiffs have employed, or investigation of the allegedly infringing websites themselves, which Plaintiffs have also employed in this and other actions.

168. Cloudflare admits that its Trust and Safety team reviewed alleged notifications of claimed infringement submitted to its web form. Cloudflare further admits that for alleged notifications of claimed infringement, at the complainant's election Cloudflare would identify the host of the allegedly infringing website along with an email address for that host, and would forward the information submitted to Cloudflare to the website host. Cloudflare denies the remainder of paragraph 168.

169. Cloudflare denies the allegations of paragraph 169.

170. This paragraph sets forth a legal conclusion to which no response is required. To the extent a response is deemed required, Cloudflare admits that sub-section 512(c)(3)(A) states:

“(3) Elements of notification.—

(A) To be effective under this subsection, a notification of claimed infringement must be a written communication provided to the designated agent of a service provider that includes substantially the following:

- (i) A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.
- (ii) Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site.
- (iii) Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit the service provider to locate the material.
- (iv) Information reasonably sufficient to permit the service provider to contact the complaining party, such as an address, telephone number, and, if available, an electronic mail address at which the complaining party



may be contacted.

(v) A statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law.

(vi) A statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.”

Cloudflare denies the remainder of paragraph 170.

171. Cloudflare denies the allegations of paragraph 171.

172. Cloudflare denies the allegations of paragraph 172. An allegation of infringement may be mistaken, legally or factually, and does not provide actual knowledge of infringement or evidence thereof.

173. Cloudflare denies the allegations of paragraph 173. An allegation of infringement may be mistaken, legally or factually, and does not provide actual knowledge of infringement or evidence thereof.

174. Cloudflare lacks knowledge to admit or deny whether the defendants whom Plaintiffs accuse of being “Infringing Websites” operate infringing websites and therefore denies the allegation implicit in the use of that phrase. Cloudflare lacks knowledge to admit or deny the other allegations and therefore denies the remainder of paragraph 174.

175. Cloudflare denies the allegations of paragraph 175. Whether or not a host complies with section 512, complainants have multiple options for identifying the host if it uses Cloudflare, including through sub-section 512(h), or by submitting a complete notification of claimed infringement and requesting that Cloudflare identify the host. Cloudflare does not insulate any person or website from legal processes.

176. Cloudflare admits that when the person submitting a notification of claimed infringement elects to have Cloudflare forward information concerning the notification of

claimed infringement to the person whose Cloudflare account corresponds to the website complained of as well as the host identified for that website, Cloudflare does so to the best of its ability and notifies the complainant of the same. Cloudflare denies the remaining allegations of paragraph 176.

177. Cloudflare denies the allegations of paragraph 177. Where the complainant has so elected, to the best of its ability Cloudflare forwards the information submitted to it via the web form to the hosting provider that it believes to correspond to the website identified in the notification of claimed infringement. [REDACTED]

[REDACTED] Moreover, the complainant is provided with the identity of the hosting provider that Cloudflare believes to correspond to the website at issue, so the complainant can send a notification of claimed infringement to the host directly and follow up if the material at issue is not taken down.

178. Cloudflare denies the allegations of paragraph 178. Where the complainant has so elected, to the best of its ability Cloudflare forwards the information submitted to it via the web form to the hosting provider that it believes to correspond to the website identified in the notification of claimed infringement. [REDACTED]

[REDACTED] Moreover, the complainant is provided with the identity of the hosting provider that Cloudflare believes to correspond to the website at issue, so the complainant can send a notification of claimed infringement to the host directly and follow up if the material at issue is not taken down.

179. Cloudflare denies the allegations of paragraph 179. Where the complainant has so elected, to the best of its ability Cloudflare forwards the information submitted to it via the web form to the hosting provider that it believes to correspond to the website identified in the

notification of claimed infringement. [REDACTED]

[REDACTED] Moreover, the complainant is provided with the identity of the hosting provider that Cloudflare believes to correspond to the website at issue, so the complainant can send a notification of claimed infringement to the host directly and follow up if the material at issue is not taken down.

180. This paragraph sets forth a legal conclusion to which no response is required. To the extent a response is deemed required, Cloudflare admits the allegations of paragraph 180.

181. This paragraph sets forth a legal conclusion to which no response is required. To the extent a response is deemed required, Cloudflare admits the allegations of paragraph 181.

182. Cloudflare denies the allegations of paragraph 182. Where the complainant has so elected, to the best of its ability Cloudflare forwards the information submitted to it via the web form to the hosting provider that it believes to correspond to the website identified in the notification of claimed infringement. [REDACTED]

[REDACTED] Moreover, the complainant is provided with the identity of the hosting provider that Cloudflare believes to correspond to the website at issue, so the complainant can send a notification of claimed infringement to the host directly and follow up if the material at issue is not taken down.

183. Cloudflare denies the allegations of paragraph 183. Cloudflare denies that it ever received a valid notification of claimed infringement from Plaintiffs under 17 U.S.C. 512(b), as would apply to the provider of system caching services such as Cloudflare. Where the complainant has so elected, to the best of its ability Cloudflare forwards the information submitted to it via the web form to the hosting provider that it believes to correspond to the website identified in the notification of claimed infringement. [REDACTED]

[REDACTED] Moreover, the complainant is provided with the identity of the hosting provider that Cloudflare believes to correspond to the website at issue, so the complainant can send a notification of claimed infringement to the host directly and follow up if the material at issue is not taken down.

184. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies the allegations of paragraph 184. A host may choose to act on an alleged notification of claimed infringement even if it is not substantially complete.

185. [REDACTED]

[REDACTED] Cloudflare denies the remainder of paragraph 185.

186. [REDACTED]

[REDACTED] Cloudflare denies the remaining allegations of paragraph 186.

187. Cloudflare denies the allegations of paragraph 187 as nonsensical. [REDACTED]

[REDACTED] Where the complainant has so elected, to the best of its ability Cloudflare forwards the information submitted to it via the web form.

188. Cloudflare denies the allegations of paragraph 188.

189. Cloudflare denies the allegations of paragraph 189. Where the complainant has so elected, to the best of its ability Cloudflare forwards the information submitted to it via the web form to the hosting provider that it believes to correspond to the website identified in the notification of claimed infringement. [REDACTED]

[REDACTED] Moreover, the complainant is

provided with the identity of the hosting provider that Cloudflare believes to correspond to the website at issue, so the complainant can send a notification of claimed infringement to the host directly and follow up if the material at issue is not taken down.

190. Cloudflare admits that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Moreover, the complainant is provided with the identity of the hosting provider that Cloudflare believes to correspond to the website at issue, so the complainant can send a notification of claimed infringement to the host directly and follow up if the material at issue is not taken down. Cloudflare denies the remainder of paragraph 190.

191. Cloudflare admits that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Moreover, the complainant is provided with the identity of the hosting provider that Cloudflare believes to correspond to the website at issue, so the complainant can send a notification of claimed infringement to the host directly and follow up if the material at issue is not taken down. Cloudflare denies the remainder of paragraph 191.

192. Cloudflare admits that when forwarding the information submitted to it via the web form to the hosting provider that Cloudflare believes to correspond to the website identified in the notification of claimed infringement, to the best of its ability Cloudflare also includes the



IP address of the allegedly infringing domain. Cloudflare denies the remainder of paragraph 192.

193. [REDACTED]

[REDACTED] Cloudflare denies the remainder of paragraph 193.

194. Cloudflare admits that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Moreover, the complainant is provided with the identity of the hosting provider that Cloudflare believes to correspond to the website at issue, so the complainant can send a notification of claimed infringement to the host directly and follow up if the material at issue is not taken down. Cloudflare denies the remainder of paragraph 194.

195. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies the allegations of paragraph 195.

196. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies the allegations of paragraph 196.

197. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies the allegations of paragraph 197.

198. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies the allegations of paragraph 198.

199. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies the allegations of paragraph 199.

200. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies

the allegations of paragraph 200.

201. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies the allegations of paragraph 201.

202. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies the allegations of paragraph 202.

203. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies the allegations of paragraph 203.

204. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies the allegations of paragraph 204.

205. [REDACTED]

[REDACTED] Cloudflare lacks knowledge to admit or deny the remaining allegations of paragraph 205 and therefore denies them.

206. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies the allegations of paragraph 206.

207. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies the allegations of paragraph 207.

208. Cloudflare admits the allegations of paragraph 208.

209. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies the allegations of paragraph 209.

210. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies the allegations of paragraph 210.

211. Cloudflare admits the allegations of paragraph 211.

212. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies the allegations of paragraph 212.

213. Cloudflare denies the allegations of paragraph 213.

214. Cloudflare denies the allegations of paragraph 214.

215. Cloudflare denies the allegations of paragraph 215.

216. Cloudflare denies the allegations of paragraph 216.

217. This paragraph sets forth a legal conclusion to which no response is required. To the extent a response is deemed required, Cloudflare denies the allegations of paragraph 217. The decision in *ALS Scan Inc. v. Cloudflare, Inc.* cited in paragraph 217 was subsequently withdrawn, and the decision in *Dow Jones & Co. v. Jiuwai Ltd.* is distinguishable.

218. Cloudflare denies the allegations of paragraph 218.

219. Cloudflare denies the allegations of paragraph 219. Moreover, the decision in *Als Scan Inc. v. Cloudflare, Inc.* cited in paragraph 219 was subsequently withdrawn.

220. Cloudflare denies the allegations of paragraph 220. Moreover, the decision in *Als Scan Inc. v. Cloudflare, Inc.* cited in paragraph 220 was subsequently withdrawn.

221. Cloudflare denies the allegations of paragraph 221.

222. [REDACTED]

[REDACTED] Cloudflare denies the remaining allegations of paragraph 222.

223. Cloudflare admits that it allows customers to adjust cache rules within certain parameters, and that some websites may prefer shorter time to live versus other websites.

Cloudflare denies that cache rules ensure that material remains in cache for the full time period selected by customers. Cloudflare lacks knowledge to admit or deny the remaining allegations



of paragraph 223 and therefore denies them.

224. Cloudflare denies the allegations of paragraph 224.

225. Cloudflare admits that any customer can adjust the cache rules for a website that it manages, including extending time to live to up to 30 days. Cloudflare denies that cache rules ensure that material remains in cache for the full time period selected by customers. Cloudflare denies the remainder of paragraph 225.

226. Cloudflare denies the allegations of paragraph 226. Always Online does not involve long-term storage by Cloudflare.

227. Cloudflare admits the allegations of paragraph 227.

228. Cloudflare admits that the quoted statements identified in paragraph 228 appear in the Cloudflare webpage cited. Cloudflare denies that it made any declaration, denies any implication that the cache reserve does not respect cache-control headers and purge requests, and denies the remainder of paragraph 228.

229. Cloudflare denies the allegations of paragraph 229.

230. Cloudflare admits that in February 2023, its webpage cited in paragraph 230 had included the text “Website speed has a huge impact on user experience, SEO, and conversion rates. Improving website performance is essential for drawing traffic to a website and keeping site visitors engaged,” which was then followed by tips for improving website loading speed, including tips that do not involve use of Cloudflare’s services. Cloudflare denies the remainder of paragraph 230.

231. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies the allegations of paragraph 231.

232. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies

the allegations of paragraph 232.

233. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies the allegations of paragraph 233.

234. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies the allegations of paragraph 234.

235. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies the allegations of paragraph 235.

236. Cloudflare admits that it emphasizes Cloudflare's ability to improve website load-times. Cloudflare denies the remainder of paragraph 236.

237. Cloudflare admits that the quotations in paragraph 237 are authentic. Cloudflare denies the remainder of paragraph 237.

238. Cloudflare admits that the block quote in paragraph 238 is authentic. Cloudflare denies the remainder of paragraph 238.

239. Cloudflare admits the allegations of paragraph 239.

240. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies the allegations of paragraph 240.

241. Cloudflare admits that it had previously included the quoted statement at the URL identified in paragraph 241 in the context of addressing tips for improving website speed. Cloudflare denies the remainder of paragraph 241.

242. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies the allegations of paragraph 242.

243. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies the allegations of paragraph 243.

244. Cloudflare denies the allegations of paragraph 244.

245. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies the allegations of paragraph 245.

246. Cloudflare lacks knowledge to admit or deny whether the websites that Plaintiffs refer to as “Infringing Websites” are indeed infringing and therefore denies the allegation implicit in the use of that phrase. Cloudflare lacks knowledge to admit or deny that it improves performance of the websites of Does 1-200. Cloudflare denies that it materially aids infringements and further denies the remainder of paragraph 246.

247. Cloudflare admits that the statement quoted in paragraph 247 previously appeared at the identified URL. Cloudflare otherwise denies the remainder of paragraph 247.

248. Cloudflare admits that the statement quoted in paragraph 248 previously appeared at the identified URL. Cloudflare denies the inference that CDNs always “massively” decrease page load times, and Cloudflare denies the remainder of paragraph 248.

249. Cloudflare admits the allegations of paragraph 249.

250. Cloudflare admits the authenticity of the block quotation in paragraph 250. Cloudflare denies the remainder of paragraph 250.

251. Cloudflare admits the allegations of paragraph 251.

252. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies the allegations of paragraph 252.

253. Cloudflare admits the authenticity and accuracy of the quotation in paragraph 253. Cloudflare denies the remainder of paragraph 253.

254. Cloudflare lacks knowledge to admit or deny whether the websites that Plaintiffs refer to as “Infringing Websites” are indeed infringing and therefore denies the allegation

implicit in the use of that phrase. Cloudflare lacks knowledge to admit or deny the other allegations and therefore denies the remainder of paragraph 254.

255. Cloudflare lacks knowledge to admit or deny whether the websites that Plaintiffs refer to as “Infringing Websites” are indeed infringing and therefore denies the allegation implicit in the use of that phrase. Cloudflare denies the remainder of paragraph 255.

256. Cloudflare denies the allegations of paragraph 256.

257. Cloudflare lacks knowledge to admit or deny whether the websites that Plaintiffs refer to as “Infringing Websites” are indeed infringing and therefore denies the allegation implicit in the use of that phrase. Cloudflare lacks knowledge to admit or deny the other allegations and therefore denies the remainder of paragraph 257.

258. Cloudflare admits the allegations relating to Railgun, although it denies that Railgun has any relevance to the Plaintiffs, their claims, or any facts in this lawsuit. Cloudflare further denies that Argo Smart Routing or Load Balancing have any relevance to the Plaintiffs, their claims, or any facts in this lawsuit. Cloudflare denies that the other language apart from the reference to Railgun Integration accurately represents and describes the sources indicated in the paragraph and accordingly denies the remainder of paragraph 258.

259. Cloudflare denies the allegations of paragraph 259.

260. Cloudflare lacks knowledge to admit or deny the allegations of paragraph 260 therefore denies them.

261. Cloudflare denies the allegations of paragraph 261.

262. Cloudflare admits that the quoted statement in paragraph 262 appears on Cloudflare’s website at the identified URL.

263. Cloudflare admits that the quoted statement in paragraph 263 appears on

Mozilla's website at the identified URL.

264. Cloudflare lacks knowledge to admit or deny the allegations of paragraph 264 therefore denies them.

265. Cloudflare lacks knowledge to admit or deny the allegations of paragraph 265 therefore denies them.

266. Cloudflare lacks knowledge to admit or deny the allegations of paragraph 266 therefore denies them.

267. Cloudflare lacks knowledge to admit or deny the allegations of paragraph 267 therefore denies them.

268. Cloudflare lacks knowledge to admit or deny whether the defendants whom Plaintiffs accuse of being "Infringing Website Defendants" operate infringing websites and therefore denies the allegation implicit in the use of that phrase. Cloudflare denies the remaining allegations of paragraph 268. Images could be obtained through services other than Cloudflare.

269. Cloudflare lacks knowledge to admit or deny whether the defendants whom Plaintiffs accuse of being "Infringing Website Defendants" operate infringing websites and therefore denies the allegation implicit in the use of that phrase. Cloudflare lacks knowledge to admit or deny the allegations of paragraph 269 therefore denies them.

270. Cloudflare denies that it facilitates infringement. Cloudflare lacks knowledge to admit or deny the remaining allegations of paragraph 270 therefore denies them.

271. Cloudflare denies the allegations of paragraph 271.

272. Cloudflare lacks knowledge to admit or deny the allegations of paragraph 272 therefore denies them.

273. Cloudflare lacks knowledge to admit or deny whether the defendants whom

Plaintiffs accuse of being “Infringing Website Defendants” operate infringing websites and therefore denies the allegation implicit in the use of that phrase. Cloudflare lacks knowledge to admit or deny the allegations of paragraph 273 therefore denies them.

274. Cloudflare lacks knowledge to admit or deny the allegations of paragraph 274 therefore denies them.

275. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies the allegations of paragraph 275.

276. Cloudflare denies the allegations of paragraph 276.

277. Cloudflare denies the allegations of paragraph 277.

278. Cloudflare denies the allegations of paragraph 278.

279. Cloudflare denies the allegations of paragraph 279.

280. Cloudflare denies the allegations of paragraph 280.

281. Cloudflare admits that it has the capability of terminating services to subscribers or account holders. Cloudflare denies that it has the capability of adjudicating which subscribers or account holders are, in fact, copyright infringers. For that reason, Cloudflare denies the remainder of paragraph 281.

282. Cloudflare denies the allegations of paragraph 282.

283. Cloudflare denies the allegations of paragraph 283.

284. Cloudflare lacks knowledge to admit or deny the allegations of paragraph 284 and therefore denies them.

285. Cloudflare lacks knowledge to admit or deny the allegations of paragraph 285 and therefore denies them.

286. Cloudflare lacks knowledge to admit or deny the allegations of paragraph 286 and

therefore denies them.

287. Cloudflare incorporates here by reference and restates its earlier responses.

288. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies the allegations of paragraph 288.

289. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies the allegations of paragraph 289.

290. Cloudflare denies the allegations of paragraph 290.

291. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies the allegations of paragraph 291.

292. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies the allegations of paragraph 292.

293. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies the allegations of paragraph 293.

294. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies the allegations of paragraph 294.

295. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies the allegations of paragraph 295.

296. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies the allegations of paragraph 296.

297. Cloudflare lacks knowledge to admit or deny the allegations and therefore denies the allegations of paragraph 297.

298. Cloudflare denies the allegations of paragraph 298.

299. Cloudflare denies the allegations of paragraph 299.

300. Cloudflare denies the allegations of paragraph 300.

301. Cloudflare denies the allegations of paragraph 301.

302. Cloudflare denies the allegations of paragraph 302.

303. Cloudflare denies the allegations of paragraph 303.

304. Cloudflare denies the allegations of paragraph 304.

305. Cloudflare denies the allegations of paragraph 305.

306. Cloudflare denies the allegations of paragraph 306. Termination of service is not a “simple measure” within the meaning of that phrase in contributory infringement case law, which uses it in the fuller phrase “simple measures to prevent further damage to copyrighted works.” Cloudflare cannot prevent further damage to any copyrighted works, and termination of its service would not have that effect.

307. Cloudflare denies the allegations of paragraph 307. Cloudflare does not make websites accessible. It prevents malicious cyberattacks on websites that threaten harm across the Internet or to targeted websites.

308. Cloudflare denies the allegations of paragraph 308.

309. Cloudflare denies the allegations of paragraph 309.

310. Cloudflare denies the allegations of paragraph 310.

311. Cloudflare denies the allegations of paragraph 311.

Cloudflare denies all allegations of the Complaint that it has not specifically admitted in its responses above. Cloudflare denies that it is liable for any matters that the Complaint alleges or that Plaintiffs are entitled to any relief they seek in the Complaint, including its prayer for relief.



## **DEFENSES**

Cloudflare asserts the following defenses, whether affirmative or otherwise, that bar or limit some or all of Plaintiffs' claims:

1. The Complaint fails to state a cause of action against Cloudflare.
2. This Court lacks personal jurisdiction over Cloudflare and venue in this District is improper.
3. The Online Copyright Infringement Liability Limitation Act, 17 U.S.C. § 512, limits the remedies available to Plaintiffs against Cloudflare: it precludes any monetary relief and any broad injunction.
4. Plaintiffs' claims against Cloudflare are moot because they cannot establish any right to a monetary remedy or to any injunction requiring conduct beyond what Cloudflare already does in the ordinary course of its business.
5. Plaintiffs lack standing to the extent they have not received registrations for their alleged copyrights as 17 U.S.C. § 411 requires; in the alternative, Plaintiffs lack standing to the extent they seek to enforce copyright registrations that contain misstatements or omissions that were material to the registrations and material to the purpose for which Plaintiffs invoke the registrations in this action.
6. The doctrine of fair use bars or limits Plaintiffs' claims.
7. The statute of limitations bars or limits Plaintiffs' claims.
8. Laches bars or limits Plaintiffs' claims.
9. Plaintiffs have suffered no injury or recoverable damages; in the alternative, Plaintiffs' failure to mitigate damages bars or limits their claims.
10. Cloudflare's innocence limits any damages claims against it.

11. The First Amendment to the United States Constitution bars or limits Plaintiffs' claims.
12. The doctrine of estoppel bars or limits Plaintiffs' claims.
13. The doctrines of consent, acquiescence, and license bar or limit Plaintiffs' claims.
14. The doctrine of unclean hands bars or limits Plaintiffs' claims.
15. The doctrine of copyright misuse bars or limits Plaintiffs' claims.
16. 17 U.S.C. § 412 bars Plaintiffs' claims for statutory damages and attorney's fees to the extent their copyright registrations were untimely.
17. The United States Constitution bars or limits Plaintiffs' claims for damages.

#### **PRAYER FOR RELIEF**

Cloudflare asks that the Court enter judgment in its favor and against Plaintiffs; that the Court adjudge that Cloudflare has not infringed upon Plaintiffs' copyrights or otherwise violated Plaintiffs' rights; that the Court adjudge that Cloudflare has no liability to either Plaintiff; that the Court adjudge that Cloudflare is not liable for any monetary relief or for any injunctive relief beyond the scope that section 512(j) authorizes, even in the case of a finding of infringement; that the Court award Cloudflare its attorneys' fees and full costs against both Plaintiffs jointly and severally pursuant to the Copyright Act, 17 U.S.C. §§ 505 and court rule; and that the Court grant all other relief as it deems proper.

#### **DEMAND FOR JURY TRIAL**

Cloudflare demands trial by jury.

Dated: March 4, 2024

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**CERTIFICATE OF SERVICE**

I hereby certify that all counsel of record who consented to electronic service are being served with a copy of the foregoing documents via the Court's CM/ECF system and served as indicated below on **March 26, 2024**. Any other counsel of record will be served by First Class U.S. mail on this same date.

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